

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

PAMELA STELLA, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

LVMH PERFUMES AND COSMETICS
USA, INC., a New York Corporation,

Defendant.

No. 07-CV-6509

Hon. Elaine E. Bucklo

Magistrate Judge Arlander Keys

**DEFENDANT LVMH PERFUMES AND COSMETICS, INC.'S
MOTION TO STAY**

Defendant LVMH Perfumes and Cosmetics, Inc. ("LVMH"), misnamed in the caption as LMVH Perfumes and Cosmetics USA, Inc., hereby moves this Court to enter an order staying this action pursuant to the doctrine of primary jurisdiction. In support of this motion, as set out in the accompanying memorandum of law, LVMH states as follows:

1. In her seven-count nationwide putative class action complaint, plaintiff contends that LVMH has violated a host of state and federal laws by allegedly manufacturing, marketing, and/or selling a lipstick product containing undisclosed trace levels of lead. Each of plaintiff's claims turns on whether (1) the trace amount of lead supposedly detected in the complained-of lipstick is significant enough to cause harm and (2) therefore trigger any ingredient disclosure or warning obligations.

2. Congress has vested the U.S. Food and Drug Administration ("FDA") with the authority to regulate interstate commerce relating to food, drugs, and cosmetics in the United States. The examination of the predicate issues in this case (from both a scientific and policy

perspective) is squarely within the regulatory ambit and specialized expertise of the FDA. Respectfully, these are not issues that fall within the conventional experience of the courts.

3. The doctrine of primary jurisdiction promotes proper relations between courts and administrative agencies and provides that whenever a threshold issue implicates the specialized experience or discretion of an administrative agency, the courts should give the agency the opportunity to examine the issue in the first instance. *See, e.g., U.S. v. Western Pacific R.R. Co.*, 352 U.S. 59, 64, 77 S. Ct. 161 (1956) (seminal U.S. Supreme Court case applying primary jurisdiction doctrine to defer proceedings pending agency resolution of underlying issue).

4. The FDA has the power to review these matters pursuant to, among other things, the Food Drug and Cosmetic Act, 21 U.S.C. § 301, and the Fair Packaging and Labeling Act, 19 U.S.C. § 1451. In response to a recent report regarding lead in lipstick, FDA has been asked by several prominent members of Congress to review these matters. And, the FDA has recently stated that it is now conducting its own evaluation of the matters.

5. Accordingly, the doctrine of primary jurisdiction is directly applicable to this case, and LVMH requests that this Court stay these proceedings until such time as the FDA completes its ongoing evaluation of the underlying threshold issues.

WHEREFORE, Defendant LVMH Perfumes and Cosmetics, Inc. requests that this Court enter an order (1) staying this case pending resolution of the underlying predicate issues by the FDA, and (2) setting this case for status in sixty (60 days).

Date: January 31, 2008

Respectfully submitted,

**LVMH PERFUMES AND COSMETICS
USA, INC.**

By: s/ Robert E. Shapiro
One of Its Attorneys

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CERTIFICATE OF SERVICE

I, Robert E. Shapiro, an attorney, hereby certify that I caused a true and correct copy of Defendant LVMH Perfumes and Cosmetics, Inc.'s foregoing **Motion to Stay** to be served upon the following on this date, January 31, 2008, by ECF/PACER electronic notice and by U.S. Mail as indicated:

By ECF/PACER Electronic Notice

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